IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1231 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHUBEN GOVINDBHAI MACHHI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1231 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MS HB PUNANI, APP for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 10/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Banna Dutta for the petitioner and ld. APP Ms. HB Punani for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of externment bearing No. PCB/ HDP/48/03/611/2004 dated 28.04.2004 passed by the Deputy Commissioner of Police, (South Zone), Vadodara City, as well as the order dated 21.07.2004 passed by the State Government modifying the appeal preferred by the petitioner-externee under Sec.60 of the Bombay Police Act, whereby the State Government partly allowed the appeal and modified the order of externment dated 28.04.2004.

3. By the impugned order of externment dated 28.04.2004, the externee was externed from the area falling under the Commissioner of Police, Vadodara City for a period of one year. Against that order, the externee filed appeal before the Deputy Secretary, Government of Gujarat, who vide order dated 21.07.2004, partly allowed the appeal and modified the order directing the petitioner externee to give personal bond of Rs.10,000/ and surety of two persons of Rs.5,000/ each from 01.05.2004 for a period of One Year, within a period of 30 days.

4. Having considered rival contentions placed before the Court, it clearly emerges that before passing the order of externment under challenge, the petitioner was served with a notice to show cause under Sec.59 of the Bombay Police Act why she should not be externed. It is alleged in the notice to show cause that the petitioner is involved herself in four criminal cases referred to in the notice and conduct of the petitioner emerging from the statement recorded by two witnesses as to the incidents occurred on 18.02.2003, 25.02.2003 and 02.03.2003. Petitioner replied the said SCN vide reply Annex.B wherein she has stated that during the proceedings before the externing authority, the petitioner has examined three witnesses and all of them have deposed categorically in favour of the petitioner and cross-examination of said witnesses was also made. One witness Shri Mukeshbhai has stated that petitioner Madhuben is working as maid-servant in nearby residential houses and is earning her livelihood. Written submissions were placed before the authority on 05.08.2003, however, the externment order came to be passed on 28.04.2004.

5. The impugned order of externment as well as order passed by the appellate authority are assailed by the petitioner on number of grounds as mentioned in the memo of the petition. However, ld. counsel Ms. Banna Dutta appearing for the petitioner has focussed her arguments on two grounds. The first point focussed by ld. counsel Ms. Dutta for the petitioner externee is that in view of the ratio of the decision of this Court, the order of externment does not take care of the delay in passing the order of externment. There is no explanation in the order as to why delay of about 7 months has been caused from the date of written submissions placed before the externing authority. According to ld. counsel Ms. Dutta, date of issuance of SCN should be considered relevant for the purpose However, there is also some force in the argument of Ms.Dutta that even if at least date of recording of deposition of last witness is considered or in the alternative date of written submissions submitted is considered as more relevant, even than it was a case of delay of about 7 months approximately. In support of her submission, she has placed reliance on the decision of this Court in the case of Balvantsingh @ Nanio Kalyansingh Rajput, Lalbaugh, Vadodara v/s Deputy Commissioner of Police, Vadodara & Anr., 1999(1) GLH 207. In the above-cited decision, this Court has held that delay in passing the order of externment, if not explained by the authority, in that event, order of externment requires to be quashed. In the case on hand, from the record, it clearly transpires that there is a delay of about 7 months in passing the order of externment and there is no reasonable explanation for the same. Thus, ratio propounded in the above-cited decision squarely applies to the facts of the present case and on this ground alone, impugned order of externment requires to be quashed and set aside.

6. The second point pressed into service by ld. counsel Ms. Dutta for the petitioner externee is that aforesaid point of delay in passing the order of externment was also specifically raised before the appellate authority and this fact is also referred to in the impugned order passed by the appellate authority. During oral submissions, decision in the case of Balvantsingh (supra) was also cited before the appellate authority, but without referring to and considering the same, impugned order of externment is passed. This itself makes it clear that the impugned order is passed mechanically and with non-application of mind. When, the very order of externment is not sustainable in the eyes of law, the order partly modifying the externment order passed by the appellate authority also bad-in-law and

appellate authority ought not to have directed the petitioner to furnish Bond of Rs.10,000/ and two sureties of Rs.5,000/ each. Unless the appellate authority reaches to a conclusion that order of externment was sustainable on merits and as a less drastic measure, the petitioner being lady doing some household work in the area, she could have been directed to furnish a bond of good conduct. Hence, the jurisdiction exercised by the appellate authority ought not to have been exercised. So, on both the grounds, the orders require to be quashed and set aside.

7. For the reasons aforesaid, this petition is allowed. Impugned order of externment dated 28.04.2004 passed by the Deputy Commissioner of Police, (South Zone), Vadodara City, as well as the impugned order dated 21.07.2004 passed by the State Government i.e. Deputy Secretary, Home Department, Sachivalaya, Gandhinagar, partly allowing the appeal and modifying the impugned order of externment, are hereby quashed and set aside. Rule is made absolute.
Direct Service is permitted.

[C. K.BUCH, J]
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